

MONTANA PUBLIC SERVICE COMMISSION UPDATE TO  
THE ENERGY & TELECOMMUNICATIONS INTERIM COMMITTEE  
STATUS OF DOCKETS

September 23, 2021  
Chairman James Brown

1. NorthWestern Energy

Capacity Acquisition – Docket 2021.02.022

- In May 2021 NorthWestern filed an application for Commission approval of two capacity resources selected in a competitive solicitation process the Company initiated in January 2020.
- The two capacity resources are:
  - a 20-year agreement with a 50 MW battery energy storage facility to be constructed in Yellowstone County;
  - a 175 MW natural gas-fired plant to be constructed for and owned by NorthWestern in Laurel, Montana.
- On July 20, the Commission found the application adequate and in compliance with minimum filing requirements.
- On July 28, the Commission issued a procedural order, which set an October 1 date for intervenor testimony and scheduled a public hearing beginning January 10, 2022.
- On September 21, NorthWestern filed a motion to suspend the procedural schedule, citing pandemic-related impacts on the construction market and supply chains that necessitate commercial decision making on timeframes that are incompatible with the docket schedule.
- NorthWestern intends to withdraw its request for approval of the natural gas-fired Laurel Generating Station, and is still considering whether to proceed with its request for approval of the Beartooth Battery Energy Storage Agreement.

NorthWestern Application to Increase PCCAM Base Cost Level – Docket  
2021.04.047

- In April 2021, NorthWestern filed an application to increase the base electricity supply cost level for its Power Costs and Credits Adjustment Mechanism (“PCCAM”). The base electricity supply cost is used to measure tracker period cost increases or decreases, to which 90%-10% sharing is applied.
- The Commission issued an interim order approving NorthWestern’s proposed base supply cost on June 30.

- In August, the Montana Consumer Counsel filed a motion to dismiss NorthWestern's application. The MCC asserts that adjustments to based electricity supply costs between comprehensive rate cases was not authorized by the Commission's order implementing the PCCAM and that between rate case adjustments would undermine the intent of the 90%-10% sharing.
- The Commission held an oral argument on the MCC's motion on September 14.
- A Commission decision on the MCC's motion is expected with the next couple of weeks.

#### Application for Approval of Interconnection Procedures and Agreements for QFs – Docket 2021.08.106

- In August, NorthWestern filed an application for approval of interconnection procedures and agreements that would control interconnection of PURPA qualifying facilities ("QFs") to NorthWestern's transmission system.
- After providing notice of the application, the Commission granted intervention to several QFs—Caithness Beaver Creek, Broad Reach Power, Clenera, and CELP—and the MCC on September 2.
- Commission staff are currently working on preparing a procedural order.

## 2. PURPA Implementation

#### Apex Solar Petition for Contract Rates and Terms – Docket 2019.11.091

- Apex Solar is an 80 MW solar qualifying facility located near Dillon, Montana.
- The Commission issued a final order setting avoided cost rates on September 30, 2020.
- Apex petitioned for judicial review of the Commission's order in November 2020.
- In July 2021, Apex and NorthWestern resolved their contractual disputes and Apex filed a motion to dismiss its appeal of the Commission's order.

#### Caithness Beaver Creek ("CBC") Petition for Contract Rates and Terms – Docket 2019.06.034

- CBC represents two hybrid wind-battery energy storage QFs with maximum delivered energy of 60 MW each.
- Methods for estimating avoided costs for hybrid facilities are not well established in the regulatory literature or in other state regulatory commission orders.
- The Commission issued a final order in December 2019, and an order on reconsideration in February 2020.
- CBC appealed the Commission's orders to the First Judicial District Court. The Court issued an order in December 2020 upholding the Commission's orders in some respects, but remanding the matter back to the Commission to correct various decisions the Court determined were arbitrary and capricious or not well supported by record evidence.

- In August 2021 the Commission issued an order on remand in response to the district court's decision.
- NorthWestern filed a motion for reconsideration of the Commission's order on remand on August 19.
- A flurry of subsequent motions and responses were filed by CBC and NorthWestern that raise a number of procedural, legal, and factual matters pertaining to the determination of rates compliant with the court order and the Commission's order on remand. Commission staff are in the process of reviewing the motions and preparing recommendations for Commission consideration.

#### Jawbone Holdings, LLC, Petition for Contract Rates and Terms – Docket 2020.12.126

- Jawbone is an approximately 80 MW wind facility to be located near Harlowton, in Wheatland County.
- Jawbone submitted its Petition, pursuant to Mont. Code Ann. §69-3-603 in December 2020 requesting that the Commission set avoided cost rates and terms for a contract with NorthWestern.
- The proceeding was delayed due to the pandemic.
- The Commission ultimately conducted a public hearing in May 2021.
- The Commission took action on Jawbone's petition on August 3.
- PSC staff are in the process of preparing a final order to implement the Commission's decision.

#### FERC Petition for Enforcement or Declaratory Ruling

- In June, a group of QFs filed a joint Petition for Enforcement and Petition for Declaratory Order with the Federal Energy Regulatory Commission ("FERC").
- In their petition, the QFs alleged that recent Commission orders interfere with a QF's right to sell its output to the interconnecting utility and discriminate against QFs by assigning responsibility for certain network upgrade costs to the QFs.
- The QFs requested that FERC initiate an enforcement action against the PSC in federal district court or, alternatively, issue a declaratory order stating that the Commission's orders are inconsistent with PURPA.
- On August 23, FERC issued a Notice stating its intent not to initiate such enforcement action.
- The Commission will likely be addressing the same, or similar, issues in Docket 2021.08.106.

### 3. Montana-Dakota Utilities

#### MDU Application for Approval of Solar QF Power Purchase Agreement – Docket 2020.11.110

- In November 2020, MDU filed an application requesting that the Commission approve a power purchase agreement between MDU and Fallon Solar, a 20 MW qualifying facility under PURPA.
- MDU and Fallon reached an agreement on purchase rates based on MDU's standard tariff rates available to qualifying facilities 3 MW or smaller.
- The agreement between MDU and Fallon was conditioned on approval by the Commission.
- Because MDU and Fallon agreed to contract rates and terms, the issues in the matter were legal in nature, including whether the Commission has statutory authority to preapprove a resource acquisition by MDU under Mont. Code Ann. §69-3-603 when the qualifying facility and utility have reached mutual agreement.
- The Commission requested that MDU and the Montana Consumer Counsel, the only intervenor in the case, submit briefs on those legal issues.
- In July 2021 the Commission issued a final order denying MDU's application, finding that the Commission lacks specific jurisdiction to approve the mutually agreed-to QF PPA.

#### MDU Integrated Resource Plan – Docket 2021.09.117

- On September 15, 2021, MDU filed its biennial integrated resource plan.
- The Commission will provide public notice of the plan and provide an opportunity for public comment (the PSC typically provides 90 days for written comments).
- The Commission will schedule two public meetings to receive public comments (typically these are in the utility's service area).

### 4. North Star Water and Sewer

- In August 2020 the Commission received multiple complaints from homeowners in a subdivision served by North Star Water and Sewer that the Company was shutting off water service in response to overuse of water for lawn irrigation.
- The Commission initiated an investigation, under Docket No. 2020.09.094, for the purpose of addressing concerns as to the adequacy of North Star's water and sewer service to its customers and mitigating the likelihood of future shut-offs of water service in the subdivision.
- The Commission did not successfully complete its investigation prior to the 2021 watering season. In late summer 2021, the PSC again received complaints of inadequate water service by North Star.

- The Commission directed North Star to procure and keep in its inventory a backup distribution pump (failure of the main distribution pump contributed service interruptions) and to work with homeowners to establish an acceptable watering schedule.
- The Commission continues to investigate long-term adequacy issues involving installation and testing of meters, alternative pricing structures, and water rights issues.

## 5. Other dockets and non-dockets

### 2021.06.094 – Wibaux County Complaint against CenturyLink Communications, LLC

In June Wibaux County filed a complaint alleging that telephone service provided by CenturyLink in Wibaux County is inadequate, that customers are often without service, sometimes for weeks at a time, that 911 service does not function properly, and that Wibaux is in need of adequate broadband service. The Commission accepted the complaint and directed CenturyLink to respond to the complaint. CenturyLink complied on August 16. On August 27, the Commission issued a Notice of Opportunity to Intervene in the matter.

### 2021.05.073 – Town of Kevin’s Complaint against North Central Montana Regional Water Authority

The Town of Kevin has filed a complaint with the Commission alleging that the North Central Regional Water Authority (of which Kevin is a member) is a public utility and should be subject to Commission jurisdiction. The Commission accepted the complaint and issued a procedural order in July. Intervention has been granted to City of Shelby and Montana Consumer Counsel.

### 2021.01.015 – Sale and Transfer of Energy West Montana and Cut Bank Gas

In January 2021, the parent company of Energy West Montana and Cut Bank Gas, Hearthstone Utilities (“HUI”), filed a joint application with Ullico Infrastructure Master Fund requesting approval for a sale and transfer of HUI and its subsidiaries to wholly-owned subsidiaries of Ullico Master Fund. The Commission provided public notice of receipt of the application in February. In March, the Commission granted intervention to the Montana Consumer Counsel and issued an initial procedural order. The parties to this matter reached a settlement agreement in July regarding the terms under which the sale and transfer would be in the public interest. The Commission conducted a public hearing on the settlement agreement on September 21.